



IFW

Docket No.: 5000-0181PUS1  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:  
Jordi TORMO I BLASCO et al.

Application No.: 10/585,316

Confirmation No.: N/A

Filed: July 6, 2006

Art Unit: N/A

For: FUNGICIDE MIXTURES

Examiner: Not Yet Assigned

**LETTER**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

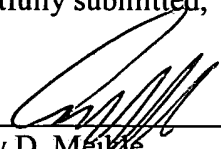
Subsequent to the filing of the above-identified application on July 6, 2006, attached hereto is an English Translation of the International Preliminary Report on Patentability issued by the International Bureau on behalf of the International Searching Authority. Please make this document of record for the above-identified application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or to credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Dated: November 29, 2006

Respectfully submitted,

By

  
Andrew D. Melkie

Registration No.: 32,868

BIRCH, STEWART, KOLASCH & BIRCH, LLP

8110 Gatehouse Road, Suite 100 East

P.O. Box 747

Falls Church, Virginia 22040-0747

(703) 205-8000

Attorney for Applicant

Attachment(s)

# PATENT COOPERATION TREATY

# PCT

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY (Chapter I of the Patent Cooperation Treaty)

(PCT Rule 44bis)

Applicant's or agent's file reference 0000055266	<b>FOR FURTHER ACTION</b>	See item 4 below
International application No. PCT/EP2005/000260	International filing date ( <i>day/month/year</i> ) 13 January 2005 (13.01.2005)	Priority date ( <i>day/month/year</i> ) 20 January 2004 (20.01.2004)
International Patent Classification (8th edition unless older edition indicated) See relevant information in Form PCT/ISA/237		
Applicant BASF Aktiengesellschaft		

1. This international preliminary report on patentability (Chapter I) is issued by the International Bureau on behalf of the International Searching Authority under Rule 44 bis.1(a).

2. This REPORT consists of a total of 7 sheets, including this cover sheet.

In the attached sheets, any reference to the written opinion of the International Searching Authority should be read as a reference to the international preliminary report on patentability (Chapter I) instead.

3. This report contains indications relating to the following items:

- |                                     |              |   |
|-------------------------------------|--------------|---|
| <input checked="" type="checkbox"/> | Box No. I    | Basis of the report   |
| <input checked="" type="checkbox"/> | Box No. II   | Priority  |
| <input type="checkbox"/>            | Box No. III  | Non-establishment of opinion with regard to novelty, inventive step and industrial applicability  |
| <input type="checkbox"/>            | Box No. IV   | Lack of unity of invention  |
| <input checked="" type="checkbox"/> | Box No. V    | Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement |
| <input checked="" type="checkbox"/> | Box No. VI   | Certain documents cited   |
| <input type="checkbox"/>            | Box No. VII  | Certain defects in the international application  |
| <input type="checkbox"/>            | Box No. VIII | Certain observations on the international application   |

4. The International Bureau will communicate this report to designated Offices in accordance with Rules 44bis.3(c) and 93bis.1 but not, except where the applicant makes an express request under Article 23(2), before the expiration of 30 months from the priority date (Rule 44bis .2).

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland	Date of issuance of this report 03 October 2006 (03.10.2006)
Facsimile No. +41 22 338 82 70	Authorized officer <div style="text-align: center; font-weight: bold; margin-top: 10px;">                     Agnes Wittmann-Regis                 </div> e-mail: pt06@wipo.int

# PATENT COOPERATION TREATY

TRANSLATION

From the  
INTERNATIONAL SEARCHING AUTHORITY

PCT

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

To:  <div style="text-align: center; font-size: 1.5em; font-weight: bold;">0</div>
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Date of mailing (day/month/year)	<b>See form PCT/ISA/210</b>
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Applicant's or agent's file reference <b>0000055266</b>	<b>FOR FURTHER ACTION</b> See paragraph 2 below
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International application No. <b>PCT/EP2005/000260</b>	International filing date (day/month/year) <b>13.01.2005</b>	Priority date (day/month/year) <b>20.01.2004</b>
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International Patent Classification (IPC) or both national classification and IPC <b>A01N43/90</b>
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Applicant <b>BASF Aktiengesellschaft</b>
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<p>1. This opinion contains indications relating to the following items:</p> <table style="width: 100%;"> <tr> <td style="width: 10%; text-align: center;"><input checked="" type="checkbox"/></td> <td style="width: 30%;">Box No. I</td> <td>Basis of the opinion</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>Box No. II</td> <td>Priority</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. III</td> <td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. IV</td> <td>Lack of unity of invention</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>Box No. V</td> <td>Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>Box No. VI</td> <td>Certain documents cited</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. VII</td> <td>Certain defects in the international application</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. VIII</td> <td>Certain observations on the international application</td> </tr> </table> <p>2. <b>FURTHER ACTION</b></p> <p>If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.</p> <p>If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.</p> <p>For further options, see Form PCT/ISA/220.</p> <p>3. For further details, see notes to Form PCT/ISA/220.</p>	<input checked="" type="checkbox"/>	Box No. I	Basis of the opinion	<input checked="" type="checkbox"/>	Box No. II	Priority	<input type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability	<input type="checkbox"/>	Box No. IV	Lack of unity of invention	<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	<input checked="" type="checkbox"/>	Box No. VI	Certain documents cited	<input type="checkbox"/>	Box No. VII	Certain defects in the international application	<input type="checkbox"/>	Box No. VIII	Certain observations on the international application
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<input type="checkbox"/>	Box No. VIII	Certain observations on the international application																						

Name and mailing address of the ISA/EP	Authorized officer
Facsimile No.	Telephone No.

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/EP2005/000260

Box No. I

Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

☐

This opinion has been established on the basis of a translation from the original language into the following language

\_\_\_\_\_, which is the language of a translation furnished for the purposes of international search (under Rule 12.3 and 23.1(b)).

2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

☐

a sequence listing

☐

table(s) related to the sequence listing

b. format of material

☐

in written format

☐

in computer readable form

c. time of filing/furnishing

☐

contained in the international application as filed.

☐

filed together with the international application in computer readable form.

☐

furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

The documents cited in this opinion appear in the same numbering as in the international search report.

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/EP2005/000260

Box No. II

Priority

1. ☐ The following document has not yet been furnished:

☐ copy of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(a)).

☐ translation of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date in the claimed priority date.

2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43bis.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.

3. Additional observations, if necessary:

The International Searching Authority has not been able to consider the validity of the priority claim because a copy of the priority document was not available to the International Searching Authority at the time that the search was conducted (Rule 17.1). This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.

PCT/EP2005/000260

**Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

**1. Statement**

Novelty (N)	Claims <u>1-10</u>	YES
	Claims _____	NO
Inventive step (IS)	Claims <u>1-10</u>	YES
	Claims _____	NO
Industrial applicability (IA)	Claims <u>1-10</u>	YES
	Claims _____	NO

**2. Citations and explanations:**

The present invention relates to a synergistic fungicidal composition comprising a triazolopyrimidine of the formula (I) (see claim 1) and fenpropidin. None of the cited documents discloses such a composition. The present application therefore satisfies the criterion mentioned in PCT Article 33(2) because the subject matter of claims 1-10 is novel in relation to the prior art as defined in the Regulations (PCT Rule 64.1 to 64.3).

D1 discloses synergistic mixtures of triazolopyrimidines of a more general formula, the specific examples of which do not correspond to the present formula (I), and fenpropidin not being mentioned.

D3 discloses the teaching that fenpropidin has a more potent fungicidal activity than fenpropimorph.

D2 (see Box VI) discloses a synergistic fungicidal composition comprising the triazolopyrimidine of the formula (I) in accordance with the present invention. However, D1 was published after the present application date.

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/EP2005/000260

Box No. V

Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability;  
citations and explanations supporting such statement

The cited prior art contains no mention of preparing the claimed composition which has been published in time, or that the possibility of synergism might be expected. The present application therefore satisfies the criterion in PCT Article 33(3) because the subject matter of claims 1-10 involves an inventive step (PCT Rule 65.1 to 65.2).

The present application satisfies the criterion mentioned in PCT Article 33(4) because the subject matter of claims 1-10 is considered as being industrially applicable.

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
PCT/EP2005/000260

**Box No. VI      Certain documents cited**

**1.    Certain published documents (Rule 43bis.1 and 70.10)**

Application No. Patent No.	Publication date (day/month/year)	Filing date (day/month/year)	Priority date (valid claim) (day/month/year)
<b>WO 2005/004608</b>	<b>20.01.2005</b>	<b>30.06.2004</b>	<b>10.07.2003</b>
			<b>16.07.2003</b>

**2.    Non-written disclosures (Rule 43bis.1 and 70.9)**

Kind of non-written disclosure	Date of non-written disclosure (day/month/year)	Date of written disclosure referring to non-written disclosure (day/month/year)

**See form 210**